

**BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS,
LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS
AND LANDSCAPE ARCHITECTS MEETING**

MINUTES

The Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA Board) met on December 11, 2002, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, with the following members present:

Architects

Robert A. Boynton
John S. Clark, Jr.
David L. May, Jr.

Landscape Architects

William M. Davenport
Ralph B. Higgins

Professional Engineers

Richard N. Davenport
Stanley C. Harris
Ronald G. Helton

Interior Designers

Susan S. Orange
Carole R. Renmark

Land Surveyors

Doyle B. Allen
John M. Elkin, Jr.
John R. McAden

Staff present for all or part of the meeting were:

Louise Fontaine Ware, Director
Sandra Whitley Ryals, Chief Deputy Director
Karen W. O'Neal, Deputy Director of Regulatory Programs
Mark N. Courtney, Assistant Director
Marian H. Brooks, Regulatory Board Administrator
Trisha L. Henshaw, Administrative Assistant
Bonnie Rhea Adams, Assistant Director of Post Adjudication
Susan A. Garbini, Legal Assistant

No representative was present from the Office of the Attorney General.

Finding a quorum of the Board present, Mr. Higgins, Chair, called the meeting to order at 9:16 a.m.

Call to Order

Mr. Higgins introduced the newest member of the Board, Carole R. Renmark of the Interior Designers Section.

**Introduction of
New Member**

Mr. Elkin moved to approve the agenda as written. Mr. Boynton seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark.

**Approval of
Agenda**

Mr. R. Davenport moved to approve the minutes from the September 10, 2002, Board meeting as written. Mr. Elkin seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark.

**Approval of
Minutes**

Mr. Harris moved to approve the minutes from the October 25, 2002, Regulatory Review Committee meeting as written. Mr. Allen seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark..

Mark Singer, representative of the Virginia Association of Surveyors (VAS), spoke to the Board regarding photogrammetry and the definition of the practice of land surveying as provided for in § 54.1-400 of the Code of Virginia. Mr. Singer stated that photogrammetry is a technology-driven profession that overlaps the practice of land surveying. Mr. Singer indicated that this is a very complicated issue, as proven during the last session of the General Assembly. This matter was brought before the General Assembly last year; however, the parties involved did not come to a consensus so the matter did not move forward. Mr. Singer also stated that land surveyors, photogrammetrists, and legislators that he has spoken with agree that this issue should be studied. Mr. Singer encouraged the Board to request that the Board for Professional and Occupational Regulation study the need to regulate photogrammetry. Mr. Singer also spoke regarding a change that needs to be made to the definition of the "practice of land surveying." Specifically, the phrase "and also includes" should be substituted with the word "or." Mr. Singer indicated that VAS is currently pursuing a statutory change through legislative action.

**Public Comment
Period**

Duncan Abernathy, representative of the Virginia Society of the American Institute of Architects, spoke regarding public entities that are requiring a professional to provide free design services during the procurement process. Mr. Abernathy requested that the Board support an amendment to the regulations to address this issue. Mr. Abernathy also stated that he spoke at a public hearing before the Board for Asbestos, Lead and Home Inspectors to request that an exemption for architects and professional engineers be included in the home inspector regulations. Mr. Abernathy indicated that the home inspectors in attendance at the public hearing were

against such an exemption.

Jonathan M. Murdoch-Kitt, counsel to William E. Swarm, spoke to the Board regarding File Number 2002-00854, with Mr. Swarm present. Mr. Murdoch-Kitt asked the Board to accept the Consent Order as recommended by the Architects Section. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Boynton was not present during the presentation.

Jonathan M. Murdoch-Kitt, Counsel, File Number 2002-00854, William E. Swarm

David B. Gammon spoke to the Section members regarding File Number 2003-00744. Mr. Gammon indicated that the matter before the Board is very important to him and that he concurs with the summary and recommendation of the presiding Board member. Mr. Gammon stated that he had to leave school in 1997, just before completing three of his final courses, due to a family emergency. Mr. Gammon stated that the incomplete grades he received in the final three classes were only because he was unable to complete the final examination and/or final project for these classes. Mr. Gammon indicated that he did participate in graduation ceremonies, even with the incomplete grades, because he had every intention of going back and completing the final assignments. Subsequently, Mr. Gammon accepted a position so that he could assist his family financially during a time of need; therefore, he was not able to return to school and complete the final assignments. Mr. Gammon indicated that since that time he has acquired qualifying, progressive engineering experience. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Harris was not present during the presentation.

David B. Gammon, File Number 2003-00744

Ashley Beuttel, counsel to Dewey L. Bocook in the matter of File Number 2002-03393, spoke to the Board on behalf of Mr. Bocook. Ms. Beuttel stated that Mr. Bocook agrees with the summary and recommendation of the presiding Board member. Further, Mr. Bocook, through Ms. Beuttel, requested that the Board accept the summary and recommendation of the presiding Board member. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Harris was not present during the presentation.

Ashley Beuttel, Counsel, File Number 2002-03393, Dewey L. Bocook

No other respondent, counsel for respondent or other representative, or participant without an appointment was present to speak before the Board.

Call for Respondent

Mr. R. Davenport moved to adopt the following resolution for service for M. Lou Barnett, which was read and presented to Ms. Barnett by Mr. Higgins:

Presentation of Resolution

M. Lou Barnett

WHEREAS, M. Lou Barnett did faithfully and diligently serve as a member of the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects from 1994 to 2002;

WHEREAS, M. Lou Barnett did devote generously of her time, talent and leadership to the Board;

WHEREAS, M. Lou Barnett did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects this eleventh day of December 2002, that M. Lou Barnett be given all honors and respect due her for her outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to her and be made a part of the official minutes of the Board so that all may know of the high regard in which she is held by this Board.

Mr. Boynton seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark.

In reference to File Number 2003-00744, David B. Gammon, the Board members reviewed the record from the Informal Fact-Finding Conference, which consisted of the application file, transcript and exhibits, and summary and recommendation of the presiding Board member, as well as the presentation given by Mr. Gammon. Mr. R. Davenport moved to accept the summary and recommendation of the presiding Board member and approve Mr. Gammon's application for the April 2003 Principles and Practice of Engineering Examination. Mr. Gammon provided information that indicated that he had completed 136 hours towards his Bachelor of Science degree. Due to a personal hardship, he was unable to complete

File Number
2003-00744,
David B.
Gammon

three courses, one English, one math, and one steel design. The course work had been completed, but not a final project or examination. Mr. Boynton seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Helton, Higgins, May, McAden, Orange, and Renmark. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Harris was not present during the discussion.

In regards to **File Number 2003-00525, Shahid H. Khan**, the Board members reviewed the record from the Informal Fact-Finding Conference, which consisted of the application file, transcript and exhibits, and summary and recommendation of the presiding Board member. Mr. R. Davenport moved to accept the summary as to the facts but reject the recommendation. No equivalency between the Canadian Professional Practice Examination and the National Council of Examiners for Engineering and Surveying (NCEES) Fundamentals of Engineering (FE) nor the Principles and Practice of Engineering Examination has been established. Additionally, Mr. Khan does not have the necessary number of years of approved experience to waive the FE examination; therefore, Mr. R. Davenport moved to deny Mr. Khan's comity application. As it appears that Mr. Khan meets the requirements for the FE examination, Mr. R. Davenport moved to approve Mr. Khan's application for the FE examination. Mr. Allen seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Helton, Higgins, May, McAden, Orange, and Renmark. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Harris was not present during the discussion.

File Number
2003-00525,
Shahid H. Khan

In reference to **File Number 2002-03393, Dewey L. Bocook**, the Board members were provided with the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcript and exhibits, and summary and recommendation of the presiding Board member, as well as the presentation by Ms. Beuttel. Mr. R. Davenport moved to accept the summary and recommendation of the presiding Board member and close the file with a finding of no violation. Mr. May seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Helton, Higgins, May, McAden, Orange, and Renmark. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Harris was not present during the discussion.

File Number
2002-03393,
Dewey L.
Bocook

In reference to **File Number 2002-03700, Jonathan H. Fleener**, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the application file, transcript and exhibits, and

File Number
2002-03700,
Jonathan H.

summary and recommendation of the presiding Board member. Mr. May moved to accept the summary as to the facts but reject the recommendation of the presiding Board member and deny Mr. Fleener's application for a land surveyor license by comity. Mr. Fleener has been given credit for seven years of verified acceptable experience while 12 years of verified acceptable experience is required, based on Mr. Fleener's education, pursuant to 18 VAC 10-20-300.6 and 18 VAC 10-20-310 of the Board's regulations. Further, Mr. Elkin noted that Mr. Fleener may continue to submit additional verifications of his experience during the three-year life of his application. Mr. R. Davenport seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark.

Fleener

In reference to File Number 2002-00854, William E. Swarm, the Board members reviewed the record from the Informal Fact-Finding Conference which consisted of the investigative file, transcript and exhibits, and summary and recommendation of the presiding Board member, as well as the presentation by Mr. Murdoch-Kitt and Mr. Swarm and the Consent Order as proposed at the Architects Section meeting. Mr. R. Davenport moved to accept the Consent Order as proposed by Mr. Swarm. The Consent Order cites a violation of 18 VAC 10-20-710(A) of the Board's 1997 regulations and imposes the following sanctions: monetary penalty of \$1000 for the violation of the Board's regulation, Board costs in the amount of \$300, and completion of 12 hours of continuing education for architects in contracting and in ethics, certifying successful completion of these courses to the Board within 12 months of acceptance of the Consent Order. Mr. R. Davenport further moved that failure to pay the penalty, costs, or to comply with all terms of the Consent Order within the specified time period shall result in the automatic suspension of Mr. Swarm's license until such time as there is compliance with all terms of the Consent Order. Mr. May seconded the motion which was unanimously approved by members: Allen, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Boynton was not present during the discussion or vote.

File Number
2002-00854,
William E.
Swarm

In regards to File Number 2002-00192, Gary M. Zickafoose, the Board members reviewed the Consent Order as seen and agreed to by Mr. Zickafoose. Mr. R. Davenport moved to accept the Consent Order, which cites a violation of 18 VAC 10-20-740(D) of the Board's 1999 regulations. For this violation, no sanction is imposed. Mr. Allen seconded the motion which was unanimously approved by members: Allen, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden,

File Number
2002-00192,
Gary M.
Zickafoose

Orange, and Renmark. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Boynton was not present during the discussion or vote.

In reference to File Number 2001-03174, David G. Yolton, the Board members reviewed the Consent Order as seen and agreed to by Mr. Yolton, as well as a letter dated December 10, 2002, from Mr. Yolton. Mr. R. Davenport moved to accept the Consent Order, which cites violations of 18 VAC 10-20-370(B)(4) of the Board's 1997 regulations (Count I) and 18 VAC 10-20-370(C)(2)(c) of the Board's 1997 regulations (Count II). For these violations, monetary penalties of \$500 (\$250 per count) and Board costs of \$300 are recommended for a total of \$800. Additionally, Mr. Yolton agrees to go out in the field and set the permanent monuments at all corners and changes of direction, and agrees to adhere, at all times henceforth, to the minimum standards of the Board's regulations. Mr. R. Davenport further moved that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Mr. Yolton's license until such time as there is compliance with all terms of this Order. Mr. Elkin seconded the motion which was unanimously approved by members: Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark. As the presiding Board member at the Informal Fact-Finding Conference, Mr. Allen was not present during the discussion or vote.

File Number
2001-03174,
David G. Yolton

The Board members were provided with the final draft of the Public Participation Guidelines (PPG's) for adoption. Mr. Courtney indicated that a change was made to the proposed PPG's to include the following statement to 18 VAC 10-10-30: "When electronic notifications are returned as undeliverable over more than one day, individuals and organizations will be deleted from the list." After discussion, Mr. Elkin moved to adopt the final PPG's once the following change is made to the above statement: "When electronic notifications are returned as undeliverable during two 24 hour periods at least one week apart, individuals and organization will be deleted from the list." Mr. Harris seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark.

Adopt Final
Public
Participation
Guidelines

The Board was provided with a report from the Regulatory Review Committee. Mr. Courtney stated that the Committee has completed its review of the regulations and the draft prepared by Committee will be sent through the next series of Section meetings and then brought before the Board at its March meeting. After discussing some of the major issues

Report from
Regulatory
Review
Committee

addressed by the Committee, Mr. Elkin moved to request legal advice from the Office of the Attorney General regarding regulation 18 VAC 10-20-790.A, which addresses the requirement of a majority vote of the Board to impose sanctions on a regulant. Mr. Elkin also included in his motion a request for advice as to how this issue will affect past cases. Mr. Harris seconded the motion which was approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, McAden, Orange, and Renmark. Mr. May voted in opposition to the motion. The motion passed with a majority vote. After reviewing an e-mail from Mr. Abernathy of the VSAIA regarding free design services, the Board directed staff to not respond until such time as the Board has the opportunity to review the draft regulations prepared by the Committee.

The Board members reviewed and discussed correspondence from Mr. Abernathy of the VSAIA regarding the home inspector regulations and the absence of an exemption for architects and professional engineers to become certified as a home inspector. Mr. Courtney indicated that the certification program is voluntary; therefore, architects and professional engineers would not be precluded from performing home inspections, they just would not be able to use the title "certified home inspector" unless they had gone through the certification process. Additionally, Mr. Courtney stated that such an exemption would need to be placed in the statutes, not the regulations. After discussion, the Board members requested a copy of the draft regulations as prepared by the Board for Asbestos, Lead and Home Inspectors for their review.

Discussion of
Home Inspector
Certification
Regulations

After discussion, Mr. Elkin moved to request that the Board for Professional and Occupational Regulation conduct a study of photogrammetry to determine whether or not regulation of the practice of photogrammetry is necessary. Mr. Boynton seconded the motion which was approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, McAden, Orange, and Renmark. Mr. May voted in opposition to the motion. The motion passed with a majority vote. Mr. Courtney indicated that he would draft the request to be presented to the Board for Professional and Occupational Regulation for consideration at its next meeting.

Request for
Study of
Photogrammetry

Mr. Courtney notified the Section members that Ms. Rowley is no longer counsel to the Board, as she has left the Office of the Attorney General. Ms. Ellen Coates is the new counsel to the Board. Additionally, Mr. Courtney indicated that due to recent budget cuts, services provided to the Board from the Office of the Attorney General would be decreased. Mr. Courtney also indicated that the Office of the Attorney General would only be responding to actual, not hypothetical, situations that require legal

Update on Legal
Services

advice.

The Board members were provided with information regarding National Council of Examiners for Engineering and Surveying (NCEES) National Awards nominations. Mr. Harris was previously awarded the NCEES Distinguished Service Award. After discussion, Mr. May moved to nominate Wilmer F. ("Bill") Sirine, former Land Surveyors Section member, for the NCEES Distinguished Service Award. Ms. Orange seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark.

The Board members were provided with the Board financial statements from September 2002 for informational purposes.

The Board members took a break from 10:27 a.m. to 10:37 a.m.

Ms. O'Neal provided an overview of the board member training presentation. The board member training, which consists of several modules, including regulatory review, finance, enforcement, and public information, will be divided so that different information is discussed over several meetings, instead of everything discussed at one meeting. Ms. O'Neal provided the Board members with training on their role as board members and board meetings. Ms. O'Neal discussed the Board's responsibilities, Conflict of Interests Act, Freedom of Information Act, closed meeting requirements and procedures, items included on meeting agendas, and requirements for posting minutes. Ms. O'Neal also provided the Board members with training on the regulatory review process. Ms. O'Neal discussed factors that affect the regulations, the stages involved in the regulatory review process, time frames and problems that may affect the regulatory review process, and public participation guidelines.

After reviewing the draft regulations relating to home inspector certification, Mr. Helton moved that the Board take no action regarding a request for an exemption for architects and professional engineers to become certified as a home inspector. Mr. R. Davenport seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark.

The Board discussed an inquiry regarding 18 VAC 10-20-740.D and E of the Board's regulations. Specifically, questions have arisen regarding regulants who have received permission to modify drawings of another

**Discussion of
NCEES National
Awards
Nominations**

**Review of Board
Financial
Statements**

Break

**Board Member
Training**

**Continuation of
Discussion of
Home Inspector
Certification
Regulations**

Other Business

professional and whether the regulants who are making the modifications are to take responsibility for the entire drawing or only the modified portion of the drawing. After discussion, the Board members agreed by consensus to have this matter reviewed by each of the Sections during the next cycle of meetings so that an answer can be provided at the March 2003 Board meeting.

The Board members also discussed a letter from Mr. Abernathy of the VSAIA regarding businesses performing non-certified services, as well as a draft response to Mr. Abernathy's letter. After discussion, the Board members agreed by consensus to have this matter reviewed by each of the Sections during the next cycle of meetings so that an answer can be provided at the March 2003 Board meeting.

The Board members discussed the matter identified as *J. C. May vs. APELSCIDLA Board*. After discussion, Mr. Boynton moved to not request consideration of an appeal from the Office of the Attorney General. Mr. Helton seconded the motion which was unanimously approved by members: Allen, Boynton, Clark, R. Davenport, W. Davenport, Elkin, Harris, Helton, Higgins, May, McAden, Orange, and Renmark.

The Board members were reminded to turn in their annual financial disclosure statements.

The Board recessed for a break from 11:50 a.m. to 12:20 p.m. so that some members could have their pictures taken for identification cards.

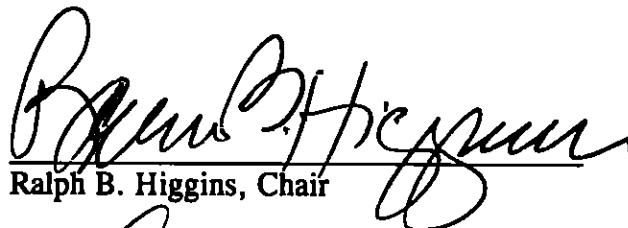
Break

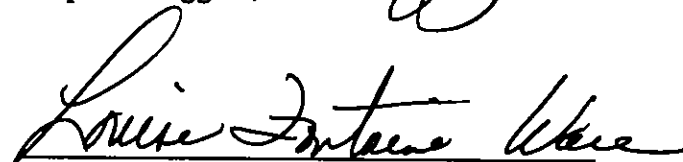
Conflict of Interest forms were completed by all members present.

Conflict of
Interest Forms

There being no further business, the meeting was adjourned at 12:30 p.m.

Adjourn


Ralph B. Higgins, Chair


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records